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OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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October 3, 2002

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RE: Harvard Dedicated Energy Limited, CS-02-05

Dear Sirs,

On June 14, 2002, pursuant to G.L. c. 164, § 1F and 220 C.M.R. § 11.05, Harvard Dedicated Energy Limited ("HDEL") filed with the Department of Telecommunications and Energy ("Department"): (1) an application for license as a competitive supplier ("Application"); and (2) a Petition for Waiver of Certain Competitive Supplier Licensing Requirements of 220 C.M.R. § 11.00 ("Petition"). On June 18, 2002, the Department invited comment on the Application and Petition.<sup>1</sup> On July 31, 2002, the Department conducted a technical conference. On August 7, 2002, HDEL filed an affidavit (with attachments) from Douglas C. Garron, the executive vice president of HDEL and director of engineering and utilities with Harvard University, in support of the Application and Petition ("Garron Affidavit").<sup>2</sup>

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<sup>1</sup> Western Massachusetts Electric Company and Division of Energy Resources commented upon the Petition and Application, and attended the technical conference.

<sup>2</sup> On its own motion, the Department moves into the record of this proceeding the Garron Affidavit and its attachments.

### The Application

The Application states that, pursuant to G.L. c. 180, HDEL is incorporated as a membership corporation, whose sole member is Harvard University (Application at ¶ 3). HDEL states that it will provide services only to its corporate parent, the President and Fellows of Harvard College (“Harvard”) (Application at ¶ 10). That is, HDEL will function as an electricity supplier only for the buildings and facilities in which Harvard pursues its educational and charitable purposes, and HDEL will not offer power for sale to the public at large outside of Harvard (Application at ¶ 10; Petition at 4).<sup>3,4</sup>

HDEL states that, initially, it intends to provide service to Harvard’s four large accounts with Cambridge Electric Light Company (“CELC”), through which Harvard distributes electricity throughout its main campus, and possibly to some other Harvard-affiliated buildings and facilities that are connected directly to the CELC system (Garron Affidavit at ¶¶ 11-14, Atts. A, B). In the future, however, HDEL may wish to provide service to other Harvard-affiliated buildings and facilities located throughout Massachusetts (*id.*). To clarify which facilities it would be eligible to serve, HDEL proposes the following criteria: (1) a Harvard entity must own or operate the building or facility; and (2) a Harvard entity must be the party responsible for paying the electricity bill for the building or facility (*i.e.*, the account with the electric distribution company must be in the name of a Harvard entity) (*id.*). HDEL defines a “Harvard entity” as “the President and Fellows of Harvard College and any entity controlled directly or indirectly by the President and Fellows of Harvard College” (*id.*).

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<sup>3</sup> HDEL states that there are four instances that, “due to pre-existing arrangements involving Harvard, HDEL would be supplying electricity to several entities not directly related to Harvard’s educational and charitable purposes: The Inn at Harvard, the Weeks Memorial Bridge, John F. Kennedy Park, and a portion of Rosovsky Hall” (Application at ¶ 10; Garron Affidavit at ¶ 8).

<sup>4</sup> HDEL states that Harvard recently has investigated its competitive options because standard offer service (1) will end in three years and thus is not a long-term solution, and (2) may be priced above what Harvard could receive in the competitive market (Petition at 2-4; Garron Affidavit at ¶¶ 9-10). Based on its investigation, Harvard concluded that, because of its size and the nature of its operations, it might receive the lowest prices by purchasing directly from wholesale suppliers, but will also seek bids from retail suppliers as part of its procurement process (Garron Affidavit at ¶¶ 9-10). Thus, by establishing HDEL, Harvard has the ability to choose between the best wholesale and the best retail option whenever we go out to bid (Petition at 2-4; Garron Affidavit at ¶¶ 9-10).

### The Petition

The Petition states that the exclusive and fiduciary relationship between HDEL and its only customer, Harvard, alleviates or renders inapplicable many of the consumer concerns that underlay the Department's regulations set forth at 220 C.M.R. §§ 11.00 et seq. (Petition at 1; Garron Affidavit at ¶ 15). HDEL further states that, as a direct corporate affiliate of Harvard, its charter "provides little or no incentives for unscrupulous behavior" toward Harvard, because its success will be judged by its ability to meet the needs of Harvard, and not by profit margins and acquisition of other retail customers (Petition at 9). Finally, HDEL states that certain of the Department's license requirements would hinder HDEL's efforts to fulfill its obligations to Harvard (id. at 1-2).

First, HDEL seeks a Department finding that the provisions included in 220 CMR § 11.05(3) do not apply to HDEL (Garron Affidavit at ¶ 18).<sup>5</sup> HDEL states that its corporate relationship to Harvard eliminates the need for consumer protection measures related to billing and termination of service (id. at ¶¶ 7, 15, 18). HDEL states that its "only customer, Harvard, is more than adequately protected from wrongful billing practices or termination by the fact that it totally controls HDEL (id. at ¶ 18)." In addition, HDEL states that it will not bill Harvard in the traditional sense of the word (id.). Instead, HDEL states that it will pay its wholesale supplier and then allocate these costs to the Harvard facilities, based on each facility's consumption, as part of the internal Harvard accounting system (id.).<sup>6</sup> Because this allocation happens automatically, and no money will change hands, there is no way that one of the Harvard accounts could make a late payment to HDEL (id.).

Second, HDEL seeks a Department finding that the corporate relationship between HDEL and its only customer, Harvard, satisfies the provisions included in 220 CMR §§11.06(2) and (3), which require that competitive suppliers prepare information disclosure labels and terms of service statements for distribution to their retail customers. HDEL states that all of the information that would be included on the information disclosure label (i.e., information regarding price, fuel, emissions, and labor characteristics), and on the terms of service statement (i.e., the terms of the contract between HDEL and its wholesale supplier) would already be known by Harvard by virtue of Harvard's ownership of HDEL (Garron Affidavit at ¶¶ 20, 21).

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<sup>5</sup> 220 CMR 11.05(3) requires that competitive suppliers comply with the Department's Billing and Termination of Generation Service Requirements set forth in 220 CMR §§ 25.00, 27.00, 28.00, 29.00.

<sup>6</sup> This is consistent with the way that Harvard's Engineering and Utilities' Department currently "charges" Harvard facilities for electric service (Garron Affidavit at ¶ 18).

Finally, pursuant to 220 C.M.R. § 11.08,<sup>7</sup> HDEL seeks a Department waiver from the provision included in 220 CMR §§ 11.06 (4) and (5), which require that competitive suppliers: (1) distribute information disclosure labels to their customers prior to initiation of service and quarterly thereafter; (2) distribute terms of service statements to their customers prior to initiation of service; and (3) prepare and distribute annually a consumer rights information booklet to its retail customers. HDEL states that “all information known by HDEL is already known by Harvard,” and, thus, it would be a “pointless exercise” to require the mailing of this information (Garron Affidavit at ¶¶ 20-22).

### Analysis and Findings

#### The Application

There are two unique aspects regarding the competitive supplier services that HDEL proposes to provide: (1) HDEL proposes to serve only one customer; (2) its sole customer would be its parent company, Harvard. As such, HDEL is requesting to be licensed as a “self-supplier,” in order to potentially reduce Harvard’s energy costs by purchasing directly from the wholesale market.

The Department’s licensing regulations, 220 C.M.R. § 11.05(2), require that competitive suppliers demonstrate that they possess the financial and technical ability to act as a supplier. In support of its financial capability to act as a competitive supplier, HDEL’s application states that Harvard will be responsible for paying all energy bills, and for funding the administrative costs of HDEL (Application at ¶ 12). In support of its technical capability to act as a competitive supplier, HDEL identifies three members of Harvard’s internal staff that have extensive experience in utility-related activities (*id.* at ¶ 14). HDEL also identifies two outside parties that will assist HDEL in performing the duties necessary to effectuate the wholesale purchasing of energy, and states that it will engage the services of other parties as necessary (*id.*). HDEL adds that it will fulfill its wholesale transactions requirements through a contractual arrangement with a NEPOOL participant (*id.* at ¶ 15). The Department finds that HDEL’s application sufficiently demonstrates its financial and technical capability to perform as a competitive supplier for Harvard. Therefore, the Department approves HDEL’s application for a competitive supplier license, with the caveat that HDEL’s license is limited to serving those electric accounts that satisfy the criteria described in the Application at ¶ 10 and Garron Affidavit at ¶¶ 11-14, Atts. A, B. HDEL’s license number is CS-039. As a condition of maintaining this license, HDEL must file updated information within 30 days of any material or organic change in the information required by 220 C.M.R. § 11.05(2), and must comply with all relevant requirements of G.L. c. 164 and the regulations promulgated thereunder, including 220 C.M.R. §§ 11.00, 12.00 *et seq.* If HDEL decides to request renewal of its license next year, it must submit a renewal application at least 30 days prior to expiration.

#### The Petition

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<sup>7</sup> 220 C.M.R. § 11.08 provides that the Department may grant an exception to any provision of 220 C.M.R. § 11.00 “for good cause shown.”

As stated above, HDEL seeks a Department finding that the provisions included in 220 C.M.R. § 11.05(3), regarding the billing and termination of generation service, do not apply. HDEL has presented sufficient evidence for us to conclude that applying these regulations to HDEL would result in the Department requiring Harvard to follow a certain procedure to terminate service with itself. Therefore, because HDEL proposes to act as a “self-supplier” (i.e., it will provide service to only one customer, and that customer would be its parent company, Harvard), the Department finds that 220 C.M.R. § 11.05(3) does not apply to HDEL.

HDEL also seeks a Department finding that the corporate relationship between HDEL and Harvard satisfies the provisions included in 220 C.M.R. §§ 11.06(2) and (3) regarding the preparation of information disclosure labels and terms of service statements. The purpose of these provisions is to ensure that suppliers present the information included in these documents in a manner that allows consumers: (1) to fully understand the contractual arrangements into which they are entering; (2) to be fully informed of their consumer rights; and (3) to compare service offerings they might receive from other competitive suppliers. HDEL has presented sufficient evidence for us to conclude that applying these regulations to HDEL would result in the Department requiring Harvard to inform itself about these matters. Therefore, because HDEL proposes to act as a “self-supplier,” the Department finds that the corporate relationship between HDEL and Harvard satisfies the provisions included in 220 C.M.R. §§ 11.06(2) and (3).

Finally, HDEL seeks a Department waiver from the provision included in 220 C.M.R. §§ 11.06 (4) and (5) regarding the distribution of information disclosure labels, terms of service statements, and consumer rights information booklets to their retail customers. HDEL has provided sufficient evidence for us to conclude that applying these regulations to HDEL would basically result in the Department requiring Harvard to distribute this information to itself. Therefore, because HDEL proposes to act as a “self-supplier,” the Department grants HDEL’s request for a waiver from the requirements set forth in 220 C.M.R. §§ 11.06(4) and (5).

By Order of the Department,

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Paul B. Vasington, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

cc: Joseph Rogers, Assistant Attorney General  
Stephen Klionsky, Esq.  
Carol Wasserman, Esq.  
Mary Cottrell, Secretary